

## JOURNAL OF THE SENATE

## IN JOINT SESSION

*Joint Session of the Two Houses to Consider Specific Amendments to the Constitution.*

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Thursday, November 9, 2006

At nine minutes past one o'clock P.M., the two Houses met in

## JOINT SESSION

and were called to order by the Honorable Robert E. Travaglini, President of the Senate.

Pledge. The President, members, guests and employees then recited the pledge of allegiance to the flag.

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*Distinguished Guests.*

Willie Mae Allen, Stephen Stat Smith and Benjamin Bracket Downing.

There being no objection, the President introduced Representative-elect Willie Mae Allen, Representative-elect Stephen Stat Smith and Senator-elect Benjamin Bracket Downing.

Beijing China delegation.

There being no objection, during the consideration of the Orders of the Day, the President several distinguished guests were recognized:

The President introduced a delegation of judges from Beijing, China. The delegation is working with the McCormack Institute at the University of Massachusetts and the Massachusetts Judges Conference.

Mass Maritime cadets.

The President introduced cadets from Massachusetts Maritime Academy. They were the guests of Senators O'Leary, Murray and Representative Patrick of Falmouth.

Pamela Richardson.

The President introduced Representative-elect Pamela Richardson.

Mr. Travis of Rehoboth moved that calendar item 20, a proposal (see House, No. 4617) (introduced into the General Court by the initiative petition of Raymond L. Flynn and others relative to the definition of marriage be placed as the first order of business before the joint session, but objection was made thereto.

Absentee voting.

The Proposal for a Legislative Amendment to the Constitution authorizing the General Court to provide for absentee voting by any voter (Senate, No. 9, amended) was considered, the question being on agreeing to the amendment.

The Proposal was as follows:--

## ARTICLE OF AMENDMENT.

Article XLV. The general court shall have power to provide by law for voting, in the choice of any officer to be elected or upon any question submitted at an election, by any qualified voter of the commonwealth by absentee ballot.

After debate, the question on again agreeing to the amendment was taken by a call of the yeas and nays, as required by Article XLVIII of the Amendments to the Constitution, at thirteen minute past one o'clock P.M., as follows, to wit (yeas 191 - nays 3) **[Senate Yeas and Nays No. 672] [House Yeas and Nays No. 900]:**

[INSERT RC "A"](#)  
[INSERT HOUSE RC "900"](#)

**The yeas and nays having been completed at twenty-two minutes past one o'clock P.M., the amendment was agreed to.**

**The amendment was laid over to the next General Court and placed on file.**

Statement of  
Representative Naughton  
of Clinton.

Subsequently a statement of Mr. Naughton of Clinton was spread upon the records of the Joint Session, as follows:

I was unable to vote on the previous roll call due to the fact that I was unavoidably detained outside the building and if present would have cast my vote in the affirmative (Yea).

Governor's Council,-  
vacancies.

The Proposal for a Legislative Amendment to the Constitution relative to vacancies in the Governor's Council (Senate, No. 14),— was read twice in accordance with the provisions of the special rules.

The Proposal was as follows:--

## ARTICLE OF AMENDMENT.

SECTION 1. The amendments to the Constitution of Massachusetts are hereby amended by striking out Article XXV and inserting in place thereof the following Article:-

Article XXV. In the case of a vacancy in the council, from a failure of election, or other cause, the secretary of state shall cause precepts to be issued to the proper officers directing them to call a election to fill such vacancy, which elections shall occur no later than 6 months following the occurrence of the vacancy.

After debate, the proposal was *rejected*; and, as required by the Constitution, was determined by a call of the yeas and nays, at twenty-eight minutes before two o'clock P.M., as follows, to wit (yeas 0 — nays 194) **[Senate Yeas and Nays No. 673] [House Yeas and Nays No. 901]:**

[INSERT RC "B"](#)  
[INSERT HOUSE RC "901"](#)

**The yeas and nays having been completed at nineteen minutes before two o'clock P.M., the proposal was *rejected*.**

Statement of  
Representative Naughton  
of Clinton.

Subsequently a statement of Mr. Naughton of Clinton was spread upon the records of the Joint Session, as follows:

I was unable to vote on the previous roll call due to the fact that I was unavoidably detained outside the building and if present would have cast my vote in the negative (Nay).

Judges,- certification.

The Proposal for a Legislative Amendment to the Constitution relative to the certification of judges (Senate, No. 15),— was read twice in accordance with the provisions of the special rules.

The Proposal was as follows:--

#### ARTICLE OF AMENDMENT.

Pt. 2, c. 3, Article I of the Constitution is hereby amended as follows:

Article I. The tenure that all commissioned officers shall by law have in their office, shall be expressed in their respective commissions. all judicial officers, duly appointed, commissioned and sworn, shall hold their offices for a period of six years. After the expiration of the initial six year term, the judicial officer, if he or she so chooses, shall have his or her name placed upon the ballot, in the County where they have been seated for the majority of six years, for a vote of affirmation. If the judicial officer chooses not to place his/her name upon the ballot his/her term shall immediately end and he or she can not be considered for appointment to any judicial position. If the judicial officer's name is placed upon the ballot and receives a majority vote of all votes cast he or she shall be reappointed for an additional six year period. If the judicial officer fails to receive a majority vote he or she shall not be eligible for reappointment to any judicial position. Should the judicial officer receive a vote of affirmation he or she will be eligible for a, reappointment in like manner every six years thereafter. Provided however, the Governor, with consent of the Council, may after due notice and hearing retire them because of advanced age or mental or physical disability; and provided further, that upon attaining seventy years of age said judges shall be retired. Such retirement shall be subject to any provisions made by law as to pensions or allowances payable to such officers upon their voluntary retirement.

The Clerk Magistrate in the County where a judicial officer's name is placed upon the ballot, shall publish the "judicial officer's sentencing and bail setting record on all F.B.I. Part I offenses for the previous six years in all County newspapers, on public access television channels within said County and post in all county courthouses. This shall be published a minimum of three weeks prior to the judicial officer's name being placed on the ballot.

Immediately upon ratification of this amendment to the Massachusetts Constitution, all judicial officers who are presently judges shall have their names placed on the ballot in the County where they are presently seated at the first statewide election for a vote of affirmation."

After debate, the proposal was *rejected*; and, as required by the Constitution, was determined by a call of the yeas and nays, at eleven minutes past two o'clock P.M., as follows, to wit (yeas 4 — nays 189) [**Senate Yeas and Nays No. 674**] [**House Yeas and Nays No. 902**]:

[INSERT RC "C"](#)

INSERT HOUSE RC "902"

**The yeas and nays having been completed at twenty minutes past two o'clock P.M., the proposal was *rejected*.**

Establishing county government.

The Proposal for a Legislative Amendment to the Constitution establishing county government (Senate, No. 16),— was read twice in accordance with the provisions of the special rules.

The Proposal was as follows:--

ARTICLE OF AMENDMENT.

County government shall be established in the Commonwealth with ten counties the same in population size.

The proposal was *rejected*; and, as required by the Constitution, was determined by a call of the yeas and nays, at twenty-one minutes past two o'clock P.M., as follows, to wit (yeas 0 — nays 196) [Senate Yeas and Nays No. 675] [House Yeas and Nays No. 903]:

INSERT RC "D"  
INSERT HOUSE RC "903"

**The yeas and nays having been completed at twenty-eight minutes past two o'clock P.M., the proposal was *rejected*.**

Elected officials,-  
emergency appointment.

The Proposal for a Legislative Amendment to the Constitution relative to emergency appointments of elected officials (Senate, No. 17),— was read twice in accordance with the provisions of the special rules.

The Proposal was as follows:--

ARTICLE OF AMENDMENT.

The Constitution of the Commonwealth is hereby amended by striking out Article LXXXIII of the Amendments to the Constitution, and inserting in place thereof the following Article of Amendment:-

Article LXXXIII. The general court shall have full power and authority to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices in periods of emergency resulting from disaster caused by enemy or terrorist attack, and to adopt such other measures as may be necessary and proper for insuring continuity of the government of the commonwealth and the governments of its political subdivisions; except that, notwithstanding Article XXX of Part the First, if more than 1/3 of the senate or more than 1/3 of the house membership is vacant as a result of enemy or terrorist attack, the General Court shall fill the vacancies by appointment, and in making the appointments it shall fill each vacancy with a person who is a resident of the district where the vacancy occurred and is of the same political party as the person who held the

office at the time the vacancy occurred. A person so appointed shall serve until a successor is elected and qualified in accordance with the provisions for filling vacancies in the general court.

**After remarks, the proposal was ordered to a third reading.**

Absentee voting.

The Proposal for a Legislative Amendment to the Constitution authorizing the General Court to provide for absentee voting by any voter (Senate, No. 2034),— was read twice in accordance with the provisions of the special rules.

The Proposal was as follows:--

#### ARTICLE OF AMENDMENT.

Article . Article XLV of the Amendments to the Constitution, as Appearing in Article CV of the Amendments, is hereby annulled and the following is adopted in place thereof:-

Article XLV. The general court shall have power to provide by law for voting, in the choice of any officer to be elected or upon any question submitted at an election, by any qualified voter of the commonwealth by absentee ballot.

**After remarks, Mr. Augustus moved, under Special Rule F, that the proposal be committed to a special committee of the joint session consisting of the members of the Joint Committee on Election Laws; and this motion prevailed.**

Gov. & Lt. Gov.,-  
vacancies.

The Proposal for Legislative Amendment to the Constitution relative to a vacancy in the office of Governor or Lieutenant Governor (House, No. 38),— was read twice in accordance with the provisions of the special rules.

The Proposal was as follows:--

#### ARTICLE OF AMENDMENT.

Section II of chapter II of Part the Second of the Constitution of the Commonwealth is hereby amended by striking out Article III and inserting in place thereof the following two articles:—

Article III. Whenever the chair of the governor shall be vacant, by reason of his death, resignation or removal, the lieutenant governor shall Become governor. Whenever the chair of the governor shall be vacant by reason of his absence from the Commonwealth, or otherwise, except for his death, resignation or removal, the lieutenant governor for the time being, shall, during such vacancy, perform all the duties incumbent upon the governor, and shall have and exercise all the powers and authorities, which by this constitution the governor is vested with, when personally present.

Article IV. Whenever the office of lieutenant governor shall become vacant, the governor shall nominate a lieutenant governor who shall take office upon confirmation by a majority vote of both the house of representatives and the senate.

After remarks, the proposal was *rejected*; and, as required by the Constitution, was determined by a call of the yeas and nays, at two minutes before three o'clock P.M., as follows, to wit (yeas 61 — nays 134) [Senate Yeas and Nays No. 676] [House Yeas and Nays No. 904]:

[INSERT RC "E"](#)

INSERT HOUSE RC "904"

**The yeas and nays having been completed at nine minutes past two o'clock P.M., the proposal was *rejected*.**

Statement of  
Representative Naughton  
of Clinton.

Subsequently a statement of Mr. Naughton of Clinton was spread upon the records of the Joint Session, as follows:

I was unable to vote on the previous roll call due to the fact that I was unable to reach the chamber during the allotted time due to the large crowd gathered outside of the Chamber and if present I would have cast my vote in the negative (Nay).

Statement of  
Representative Murphy of  
Lowell.

Subsequently a statement of Mr. Murphy of Lowell was spread upon the records of the Joint Session, as follows:

I would like to call to the attention of the House the fact that on the previous roll, I was not recorded due to being on official business in another part of the State House, meeting with the presidents of the community colleges in my capacity as House Chairman of the committee on Higher Education. Had I been present I would have voted in the negative.

General Court,- terms.

The Proposal for Legislative Amendment to the Constitution to change the length of term for Representatives and Senators from two years to four years (House, No. 39),— was placed before the Joint Session.

The President ruled that since this proposal was a duplicate of Senate, No. 11 which was previously *rejected* by a vote of the Joint Session, the proposal was declared moot as the Joint Session had previously considered the same subject matter.

Constitutional  
amendment,-  
redistricting.

The Proposal for Legislative Amendment to the Constitution relative to redistricting for the House of Representatives, Senate and Governor's Council (House, No. 40),— was read twice in accordance with the provisions of the special rules.

The Proposal was as follows:--

ARTICLE OF AMENDMENT.

SECTION 1. Section 1 of article XVI of the Amendments to the Constitution of the commonwealth, as amended by Article XXV, Article LXIV and Article LXXX, is hereby amended in the third sentence by striking out after the word "then" the words "the legislature" and inserting in place thereof the following words:- bipartisan redistricting commission, as established by the General Court.

SECTION 2. Section 1 of said article CI of the Amendments to the Constitution of the commonwealth, as amended by Article CXVII and Article CXIX, is hereby amended, in the second paragraph, in the second sentence by striking out after the word "The" the words "General Court" and inserting in place thereof the following words:- bipartisan redistricting commission, as established by the General Court.

SECTION 3. Section 2 of said article CI of the Amendments to the Constitution of the commonwealth, as amended by Article CXVII and Article CXIX, is hereby amended in the third sentence by striking out after the word "The" the words "General Court" and inserting in place thereof the following words:- bipartisan redistricting commission, as established by the General Court.

After remarks, the proposal was *rejected*; and, as required by the Constitution, was determined by a call of the yeas and nays, at twelve minutes past three o'clock P.M.,

as follows, to wit (yeas 37 — nays 160) [**Senate Yeas and Nays No. 677**] [**House Yeas and Nays No. 905**]:

[INSERT RC "F"](#)  
[INSERT HOUSE RC "905"](#)

**The yeas and nays having been completed at twenty-two minutes past three o'clock P.M., the proposal was *rejected***

Marriage,- definition.

The Proposal for Legislative Amendment to the Constitution to define marriage as the union of one man and one woman (House, No. 653),— was read twice in accordance with the provisions of the special rules.

The Proposal was as follows:--

#### ARTICLE OF AMENDMENT.

It being the public policy of this Commonwealth to protect the unique relationship of marriage, in order to promote, among other goals, the stability and welfare of society and the best interests of children, only the union of one man and one woman shall be valid or recognized as a marriage in Massachusetts. Any other relationship shall not be recognized as a marriage or its legal equivalent, nor shall it receive the benefits or incidents exclusive to marriage from the Commonwealth, its agencies, departments, authorities, commissions, offices, officials and political subdivisions.

Quorum.

During consideration, at nineteen minutes before five o'clock P.M., Mr. Loscocco of Holliston doubted the presence of a quorum and asked for a call of the yeas and nays to ascertain if a quorum was present. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum at nineteen minutes before five o'clock P.M., as follows to wit (Answered Present 192) [**Senate Yeas and Nays No. 678**] [**House Yeas and Nays No. 906**]:

[INSERT RC "G"](#)  
[INSERT HOUSE RC "906"](#)

The yeas and nays having been completed at twenty-seven minutes before three o'clock P.M., a quorum was declared present.

During further consideration, Mr. Loscocco of Holliston moved, under Special Rule F, that the proposal be committed to a special committee of the joint session consisting of the members of the Joint Committee the Judiciary.

The question on committing the proposal to a special committee of the joint session was determined by a call of the yeas and the nays, at eight minutes before five o'clock P.M., on motion of Mr. Loscocco, as follows, to wit (yeas 25 — nays 168) [**Senate Yeas and Nays No. 679**] [**House Yeas and Nays No. 907**]:

[INSERT RC "H"](#)  
[INSERT HOUSE RC "907"](#)



The yeas and nays having been completed at one minute before five o'clock P.M., the motion did not prevail.

Statement of  
Representative Festa of  
Melrose.

Subsequently a statement of Mr. Festa of Melrose was spread upon the records of the Joint Session, as follows:

I would like to call to the attention of the House the fact that on the previous roll, I was not recorded due to being on official business in another part of the State House. Had I been present I would have voted in the negative.

Statement of  
Representative Grant of  
Beverly.

Subsequently a statement of Ms. Grant of Beverly was spread upon the records of the Joint Session, as follows:

I would like to call to the attention of the House the fact that on the previous roll, I was not recorded due to being on official business in another part of the State House. Had I been present I would have voted in the negative.

Statement of  
Representative Lantigua  
of Lawrence.

Subsequently a statement of Mr. Lantigua of Lawrence was spread upon the records of the Joint Session, as follows:

I would like to call to the attention of the House the fact that on the previous roll, I was not recorded due to being on official business in another part of the State House. Had I been present I would have voted in the negative.

After further consideration, the proposal was *rejected*; and, as required by the Constitution, was determined by a call of the yeas and nays, at twenty-four minutes past five o'clock P.M., as follows, to wit (yeas 0 — nays 196) **[Senate Yeas and Nays No. 680] [House Yeas and Nays No. 908]:**

[INSERT RC "I"](#)  
[INSERT HOUSE RC "908"](#)

**The yeas and nays having been completed at twenty-nine minutes before six o'clock P.M., the proposal was *rejected***

Recess. Mr. Rushing then moved that the joint session stand in recess until Tuesday, January 2, 2007, at two o'clock P.M.

The question on recessing the joint session was determined by a call of the yeas and the nays, at twenty-seven minutes before six o'clock P.M., as follows, to wit (yeas 109 — nays 87) **[Senate Yeas and Nays No. 681] [House Yeas and Nays No. 909]:**

[INSERT RC "J"](#)  
[INSERT HOUSE RC "909"](#)

**The yeas and nays having been completed at twenty-one minutes before six o'clock P.M., the motion prevailed.**

Without further action on the matters duly and constitutionally assigned for consideration, at twenty-one minutes before six o'clock P.M., the joint session was recessed until two o'clock P.M., on Tuesday, January 2, 2007; and the Senate withdrew from the House Chamber under the escort of the Sergeant-at-Arms.

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